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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

From

FILE: B-196282

DATE: March 10, 1980

MATTER OF: ~~*~~ National Office Moving Co.

DLG 04050

DIGEST:

1. Bid which priced certain items at "\$0" is not ambiguous where only reasonable interpretation under circumstances is that bidder intended to supply items.
2. Where error in bid should not have been treated as "apparent clerical mistake," correction can be allowed to stand only if there is clear and convincing evidence of mistake, its nature, and intended bid.

*[Protest Against]
AGC 00032*

~~National Office Moving Co. (National) protests the determination by the Department of State to permit an upward correction of a bid by Keahey Moving and Storage Company, Inc. (Keahey), and the subsequent award of a contract to that firm.~~

DLG 04051

Invitation for bids (IFB) No. 8660-900001, issued August 28, 1979, solicited bids for a requirements-type contract for office furniture and equipment moving services from October 1, 1979, through September 30, 1980. Bids for each of 26 labor and equipment categories were to be expressed in per-hour cost. Bids were opened on September 28, and evaluated on the basis of the rates quoted for 13 of the 26 categories.

The bid submitted by Keahey, the incumbent, had been prepared with zeros ("\$0") entered as the price for nine of the relevant 13 labor categories and was, at \$155,490, the lowest of the six bids submitted. These nine categories represent supervisory labor rates, rates for other labor categories and rates to be charged for "premium" services (overtime,

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weekends, emergencies). ^{It is} reported that the contracting officer became suspicious that a clerical error had occurred in Keahey's bid since he considered it contrary to standard commercial practice for a vendor to supply labor to the Government at no cost. The contracting officer then proceeded to telephone Keahey for bid verification and was informed by Keahey that the base rate of \$7.10 was intended to apply to all labor categories bid at "\$0." Keahey explained that the zeros in the bid indicated that no premium above the \$7.10 base rate would be charged.

The contracting officer accepted Keahey's oral explanation and, after examining a bid abstract from a 1975 procurement under which Keahey bid a single base rate applicable to supervisors, truck drivers and movers, concluded that the zeros did, in fact, constitute clerical mistakes. Keahey's bid was then corrected on the basis of this information pursuant to Federal Procurement Regulations (FPR) § 1-2.406-2 (1964 ed.) and reevaluated with \$7.10 substituted for the zeros. This change resulted in a \$29,607 increase in the original evaluation, for a new evaluated bid of \$185,097. Although Keahey's remained the low bid, this correction brought it to within \$662 of National, the next low bidder at \$185,759. The contract was awarded to Keahey.

The contract.
National submits alternative bases for its protest, arguing first that Keahey's bid should have been rejected as nonresponsive because the entry of "\$0" for nine categories made the intended amount of the bid ambiguous. Secondly, National contends that even if the bid was responsive, correction should not have been permitted since this was not an apparent clerical mistake and Keahey did not submit "clear and convincing" evidence of a mistake. Finally, it is suggested that the correction should not have been permitted in any event since it brought Keahey's bid to within \$662 of National's, and thus "opened to question the credibility and integrity of the competitive procurement process."

Where a bid is subject to two reasonable interpretations, under one of which it would be responsive and under the other nonresponsive, the bid will be rejected as ambiguous. Harco Inc., B-189045, August 24, 1977, 77-2 CPD 144. Thus, in most cases, a failure to enter a price or a "no charge" notation for a required item in an invitation renders a bid nonresponsive, since although the bidder may have intended to furnish the item at no charge, it is also a reasonable interpretation that he did not intend to be bound to provide the item. Bob's Aircraft & Industrial Cleaning Co., Inc., B-182307, March 24, 1975, 75-1 CPD 174. However, we do not believe that Keahey's bid can be subject to two reasonable interpretations. The entry of a zero in a space provided for the price of an item can only be reasonably interpreted as an intent to supply the item. We therefore ~~believe that Keahey's~~ bid was correctly deemed responsive to the IFB. *The awardee's*

Regarding the contracting officer's conclusion as to the existence of a clerical error in the Keahey bid, we point out that as a general matter clerical errors are those that result from the transposition of rates, classifications, or figures and other clerical mistakes in processing bid schedules. Dawson Construction Company, Inc., B-189036, February 9, 1978, 78-1 CPD 108. In this respect, FPR § 1-2.406-2 cites a number of examples of correctable clerical mistakes, including obvious misplacement of decimal points, obviously incorrect discounts and obvious mistakes in designation of units.

However, we do not believe that the alleged error in Keahey's bid can be so categorized. Keahey's claim that "the zeros were meant to mean base rate, without increase for job category over regular labor," clearly indicates that the zeros were recorded purposely, not inadvertently. The fact that Keahey may have intended to convey a meaning other than is commonly understood by the use of "\$0," does not convert the alleged mistake into a clerical error. Accordingly, we find that the evidence before the contracting officer could not reasonably justify a determination that there was an apparent clerical mistake.

Thus, correction should not have been permitted absent submission of "clear and convincing" evidence of the mistake, the manner in which it occurred, and the intended bid. FPR § 1-2.406-3. The only evidence in the record supporting Keahey's claimed error is a four-year old bid abstract and Keahey's own uncorroborated statements. However, the clear and convincing evidence burden is not satisfied by a simple statement of mistake. See 52 Comp. Gen. 258, 261 (1972); The Manbeck Bread Company, B-190043, October 5, 1977, 77-2 CPD 273. Thus, while the bid abstract indicates that Keahey once previously charged a base rate applicable to several labor categories, it does not establish that this practice was intended for the bid in question. A high standard of proof is required to allow bid correction if the potential for fraud flowing from these decisions is to be avoided. See 53 Comp. Gen. 232 (1973). Clearly, that standard of proof has not been met in this case, and ~~we thus~~ ^{we} concluded that there was no reasonable basis for the decision to allow correction. John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPD 294.

Finally, ^{GAD held} ~~we believe~~ that correction should not have been allowed in any event, since the corrected bid price came within one-half of one percent of the next low bid. In Asphalt Construction, Inc., 55 Comp. Gen. 742 (1976), 76-1 CPD 82, we denied a correction which would have raised the bid to within one percent of the second low bid on a \$670,000 procurement. Correction was also disallowed in 48 Comp. Gen. 748 (1969) where the low bid would have been increased to within \$613 of the next low bid of \$272,464. In that case we stated:

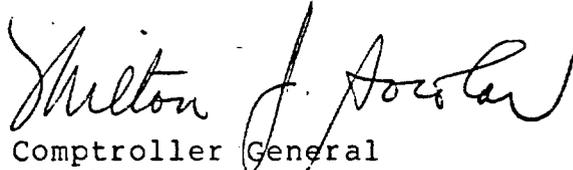
". . . regardless of the good faith of the party or parties involved, correction should be denied in any case in which there exists any reasonable basis for argument that public confidence in the integrity

of the competitive bidding system would be adversely affected thereby. The present case, it seems to us, falls in this category."

Accordingly, ^{GAO} we recommended that the contract awarded to Keahey be terminated for the convenience of the Government and reawarded to ^{the Division} National, if that firm is found to be responsible. By letter of today we are advising the Secretary of State of our recommendation.

The protest ^{is} sustained.

Since this decision contains a recommendation for corrective action, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations, and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.



For the Comptroller General
of the United States